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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Dennis Welsh,

Plaintiff,

vs.

MD Helicopters, Inc., an Arizona corporation, **Southwest Technical Solutions, Inc.,** an Arizona corporation, **Alan Carr and Jane Doe Carr,** a married couple, **Yaropolk Hladkyj and Jane Doe Hladkyj,** a married couple, **Barry Sullivan and Jane Doe Sullivan,** a married couple, **Timothy Mahowald and Jane Doe Mahowald,** a married couple, and **Joetta Midkiff and John Doe Midkiff,** a married couple,

Defendants.

No.

VERIFIED COMPLAINT

Plaintiff, Dennis Welsh (“Plaintiff” or “Welsh”), sues the Defendants, MD Helicopters, inc. (“MD Helicopters”), Southwest Technical Solutions, Inc. (“STS”), Alan Carr and Jane Doe Carr, Yaropol Hladkyj and Jane Doe Hladkyj, Barry Sullivan and Jane Doe Sullivan, Timothy Mahowald and Jane Doe Mahowald, and Joetta Midkiff and John Doe Midkiff (collectively “Defendants”); and alleges as follows:

PRELIMINARY STATEMENT

1
2 1. This is an action for unpaid minimum wages wages, liquidated damages,
3 attorneys’ fees, costs, and interest under the Fair Labor Standards Act (“FLSA”), 29
4 U.S.C. § 201, et seq.; the Arizona Minimum Wage Act (“AMWA”), Arizona Revised
5 Statutes (“A.R.S.”) § Title 23, Chapter 8; and the Arizona Wage Act (“AWA”), A.R.S. §
6 23-351, et seq.

8 2. The FLSA was enacted “to protect all covered workers from substandard
9 wages and oppressive working hours.” Barrentine v. Ark Best Freight Sys. Inc., 450 U.S.
10 728, 739 (1981). Under the FLSA, employers must pay all non-exempt employees a
11 minimum wage of pay for all time spent working during their regular 40-hour
12 workweeks. See 29 U.S.C. § 206(a). Under the FLSA, employers must pay all non-
13 exempt employees one and one-half their regular rate of pay for all hours worked in
14 excess of 40 hours in a workweek. See 29 U.S.C § 207.

17 3. The AMWA, A.R.S § 23-363, et seq., establishes a minimum wage within
18 the State of Arizona.

19 4. The AWA, A.R.S. § 23-350, et seq., establishes standards for wage
20 payments to employees within the State of Arizona.

JURISDICTION AND VENUE

23 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and
24 29 U.S.C. § 201, *et seq.* because this civil action arises under the Constitution and law of
25 the United States.
26
27

1 STS does business, has offices, and/or maintains agents for the transaction of its
2 customary business in Maricopa County, Arizona.

3 11. Under the FLSA, Defendant STS is an employer. The FLSA defines
4 “employer” as any person who acts directly or indirectly in the interest of an employer in
5 relation to an employee. At all relevant times, Defendant STS had the authority to hire
6 and fire employees, supervised and controlled work schedules or the conditions of
7 employment, determined the rate and method of payment, and maintained employment
8 records in connection with Plaintiff’s employment with Defendants. As a person who
9 acted in the interest of Defendants in relation to the company’s employees, Defendant
10 STS is subject to liability under the FLSA.
11
12

13 12. Defendants Alan Carr and Jane Doe Carr are, upon information and belief,
14 husband and wife. They have caused events to take place giving rise to the claims in this
15 Complaint as to which their marital community is fully liable. Alan Carr and Jane Doe
16 Carr are owners of Defendant MD Helicopters and were at all relevant times Plaintiff’s
17 employers as defined by the FLSA, 29 U.S.C. § 203(d).
18

19 13. Under the FLSA, Defendants Alan Carr and Jane Doe Carr are employers
20 under the FLSA. The FLSA defines “employer” as any person who acts directly or
21 indirectly in the interest of an employer in relation to an employee. At all relevant times,
22 Defendants Alan Carr and Jane Doe Carr had the authority to hire and fire employees,
23 supervised and controlled work schedules or the conditions of employment, determined
24 the rate and method of payment, and maintained employment records in connection with
25 Plaintiff’s employment with Defendants. As persons who acted in the interest of
26
27

1 Defendants in relation to the company's employees, Defendants Alan Carr and Jane Doe
2 Carr are subject to individual liability under the FLSA.

3 14. Defendants Yaropolk Hladkyj and Jane Doe Hladkyj are, upon information
4 and belief, husband and wife. They have caused events to take place giving rise to the
5 claims in this Complaint as to which their marital community is fully liable. Yaropolk
6 Hladkyj and Jane Doe Hladkyj are owners of Defendant MD Helicopters and were at all
7 relevant times Plaintiff's employers as defined by the FLSA, 29 U.S.C. § 203(d).
8

9 15. Under the FLSA, Defendants Yaropolk Hladkyj and Jane Doe Hladkyj are
10 employers under the FLSA. The FLSA defines "employer" as any person who acts
11 directly or indirectly in the interest of an employer in relation to an employee. At all
12 relevant times, Defendants Yaropolk Hladkyj and Jane Doe Hladkyj had the authority to
13 hire and fire employees, supervised and controlled work schedules or the conditions of
14 employment, determined the rate and method of payment, and maintained employment
15 records in connection with Plaintiff's employment with Defendants. As persons who
16 acted in the interest of Defendants in relation to the company's employees, Defendants
17 Yaropolk Hladkyj and Jane Doe Hladkyj are subject to individual liability under the
18 FLSA.
19
20
21

22 16. Defendants Barry Sullivan and Jane Doe Sullivan are, upon information
23 and belief, husband and wife. They have caused events to take place giving rise to the
24 claims in this Complaint as to which their marital community is fully liable. Barry
25 Sullivan and Jane Doe Sullivan are owners of Defendant MD Helicopters and were at all
26 relevant times Plaintiff's employers as defined by the FLSA, 29 U.S.C. § 203(d).
27

1 17. Under the FLSA, Defendants Barry Sullivan and Jane Doe Sullivan are
2 employers under the FLSA. The FLSA defines “employer” as any person who acts
3 directly or indirectly in the interest of an employer in relation to an employee. At all
4 relevant times, Defendants Barry Sullivan and Jane Doe Sullivan had the authority to hire
5 and fire employees, supervised and controlled work schedules or the conditions of
6 employment, determined the rate and method of payment, and maintained employment
7 records in connection with Plaintiff’s employment with Defendants. As persons who
8 acted in the interest of Defendants in relation to the company’s employees, Defendants
9 Barry Sullivan and Jane Doe Sullivan are subject to individual liability under the FLSA.
10

11
12 18. Defendants Timothy Mahowald and Jane Doe Mahowald are, upon
13 information and belief, husband and wife. They have caused events to take place giving
14 rise to the claims in this Complaint as to which their marital community is fully liable.
15 Timothy Mahowald and Jane Doe Mahowald are owners of Defendant STS and were at
16 all relevant times Plaintiff’s employers as defined by the FLSA, 29 U.S.C. § 203(d).
17

18 19. Under the FLSA, Defendants Timothy Mahowald and Jane Doe Mahowald
19 are employers under the FLSA. The FLSA defines “employer” as any person who acts
20 directly or indirectly in the interest of an employer in relation to an employee. At all
21 relevant times, Defendants Timothy Mahowald and Jane Doe Mahowald had the
22 authority to hire and fire employees, supervised and controlled work schedules or the
23 conditions of employment, determined the rate and method of payment, and maintained
24 employment records in connection with Plaintiff’s employment with Defendants. As
25 persons who acted in the interest of Defendants in relation to the company’s employees,
26
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1 Defendants Timothy Mahowald and Jane Doe Mahowald are subject to individual
2 liability under the FLSA.

3 20. Defendants Joetta Midkiff and John Doe Midkiff are, upon information and
4 belief, husband and wife. They have caused events to take place giving rise to the claims
5 in this Complaint as to which their marital community is fully liable. Joetta Midkiff and
6 John Doe Midkiff are owners of Defendant STS and were at all relevant times Plaintiff's
7 employers as defined by the FLSA, 29 U.S.C. § 203(d).

8
9 21. Under the FLSA, Defendants Joetta Midkiff and John Doe Midkiff are
10 employers under the FLSA. The FLSA defines "employer" as any person who acts
11 directly or indirectly in the interest of an employer in relation to an employee. At all
12 relevant times, Defendants Joetta Midkiff and John Doe Midkiff had the authority to hire
13 and fire employees, supervised and controlled work schedules or the conditions of
14 employment, determined the rate and method of payment, and maintained employment
15 records in connection with Plaintiff's employment with Defendants. As persons who
16 acted in the interest of Defendants in relation to the company's employees, Defendants
17 Joetta Midkiff and John Doe Midkiff are subject to individual liability under the FLSA.

18
19 22. Plaintiff is further informed, believes, and therefore alleges that each of the
20 Defendants herein gave consent to, ratified, and authorized the acts of all other
21 Defendants, as alleged herein.

22
23 23. Defendants, and each of them, are sued in both their individual and
24 corporate capacities.
25
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1 24. Defendants are jointly and severally liable for the injuries and damages
2 sustained by Plaintiff.

3 25. At all relevant times, Plaintiff was an “employee” of Defendants as defined
4 by the FLSA, 29 U.S.C. § 201, *et seq.*
5

6 26. The provisions set forth in the FLSA, 29 U.S.C. § 201, *et seq.*, apply to
7 Defendants.

8 27. At all relevant times, Defendants were and continue to be “employers” as
9 defined by the FLSA, 29 U.S.C. § 201, *et seq.*
10

11 28. The provisions set forth in the A.R.S. Title 23, Articles 7 and 8 apply to
12 Defendants.

13 29. At all relevant times, Plaintiff was an “employee” of Defendants as defined
14 by A.R.S. § 23-362.
15

16 30. At all relevant times, Defendants were and continue to be “employers” of
17 Plaintiff as defined by A.R.S. § 23-362.

18 31. Defendants individually and/or through an enterprise or agent, directed and
19 exercised control over Plaintiff’s work and wages at all relevant times.
20

21 32. Plaintiff, in his work for Defendants, was employed by an enterprise
22 engaged in commerce that had annual gross sales of at least \$500,000.

23 33. At all relevant times, Plaintiff, in his work for Defendant, was engaged in
24 commerce or the production of goods for commerce.
25

26 34. At all relevant times, Plaintiff, in his work for Defendants, was engaged in
27 interstate commerce.

1 43. Rather than classify Plaintiff as an employee, Defendants classified him as
2 an independent contractor.

3 44. Despite Defendants having misclassified Plaintiff as an independent
4 contractor, Plaintiff was actually an employee, as defined by the FLSA, 29 U.S.C. § 201
5 et seq.
6

7 45. In his work for Defendants, and throughout his entire employment with
8 Defendants, Plaintiff was not compensated \$684 per week on a salary basis.

9 46. Plaintiff, in his work for Defendants, was subject to a policy and practice of
10 having varying amounts of weekly pay based on quality or quantity of work.
11

12 47. Defendants controlled Plaintiff's schedules.

13 48. In his work for Defendants, Plaintiff used equipment owned by Defendants.

14 49. At all relevant times, Plaintiff was economically dependent on Defendants.
15

16 50. The following further demonstrate that Plaintiff was an employee:

17 a. Defendants had the exclusive right to hire and fire Plaintiff;

18 b. Defendants supervised Plaintiff and subjected him to Defendants'
19 rules;
20

21 c. Plaintiff had no opportunity for profit or loss in the business;

22 d. The services rendered by Plaintiff in his work for Defendants was
23 integral to Defendants' business;

24 e. Plaintiff was hired with the expectation of becoming a permanent
25 employee;
26

27 f. Plaintiff had no right to refuse work assigned to him by Defendants.

1 51. Upon information and belief, Plaintiff's final week of employment with
2 Defendants was the week of August 9, 2021.

3 52. During his final week of work, Plaintiff worked Monday, Tuesday, and
4 Wednesday for approximately 30 hours total.
5

6 53. Upon information and belief, on approximately Thursday August 12, 2021,
7 Defendants advised Plaintiff that his contract was not being renewed and that they would
8 mail him a check the following week for the work he performed Monday through
9 Wednesday.
10

11 54. To date, Defendants have failed to compensate Plaintiff any wages
12 whatsoever for his final week of work for Defendants.

13 55. Plaintiff acted diligently in attempting to obtain his final paycheck, but
14 Defendants ultimately ignored Plaintiff's efforts.
15

16 56. As a result of failing to compensate Plaintiff his final paycheck, Defendants
17 failed to compensate Plaintiff at least the statutory minimum wage for all hours worked in
18 his final workweek.

19 57. As a result of Defendants' willful failure to compensate Plaintiff at least the
20 statutory minimum wage for such hours worked, Defendants violated 29 U.S.C. § 206(a).
21

22 58. As a result of Defendants' willful failure to compensate Plaintiff at least the
23 statutory minimum wage for such hours worked, Defendants violated the AMWA,
24 A.R.S. § 23-363.
25

26 59. As a result of Defendants' willful failure to compensate Plaintiff all wages
27 due and owing for such hours worked, Defendants violated the AWA, A.R.S., § 23-351.

1 60. Defendants classified Plaintiff as an independent contractor to avoid their
2 obligation to pay Plaintiff minimum wage for all hours worked in a given workweek.

3 61. Plaintiff was a non-exempt employee.

4 62. Defendants knew that – or acted with reckless disregard as to whether –
5 their refusal or failure to properly compensate Plaintiff during the course of his
6 employment would violate federal and state law, and Defendants were aware of the
7 FLSA minimum wage and overtime requirements during Plaintiff’s employment. As
8 such, Defendants’ conduct constitutes a willful violation of the FLSA, the AMWA, and
9 the AWA.
10

11
12 63. Defendants refused and/or failed to properly disclose to or apprise Plaintiff
13 of his rights under the FLSA.

14 64. Plaintiff is a covered employee within the meaning of the FLSA.

15
16 65. Defendants refused and/or failed to properly disclose to or apprise Plaintiff
17 of his rights under the FLSA.

18 66. Defendants individually and/or through an enterprise or agent, directed and
19 exercised control over Plaintiff’s work and wages at all relevant times.

20
21 67. Due to Defendants’ illegal wage practices, Plaintiff is entitled to recover
22 from Defendants compensation for unpaid minimum wages, an additional amount equal
23 amount as liquidated damages, interest, and reasonable attorney’s fees and costs of this
24 action under 29 U.S.C. § 216(b).

25
26 68. Due to Defendants’ illegal wage practices, Plaintiff is entitled to recover
27 from Defendants compensation for unpaid minimum wages, an additional amount equal

1 to twice the unpaid minimum wages as liquidated damages, interest, and reasonable
2 attorney's fees and costs of this action under A.R.S § 23-363.

3 69. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover
4 from Defendants compensation for his unpaid wages at an hourly rate, to be proven at
5 trial, in an amount that is treble the amount of his unpaid wages, plus interest thereon,
6 and his costs incurred under A.R.S. § 23-355.

8 **COUNT ONE: FAIR LABOR STANDARDS ACT**
9 **FAILURE TO PAY MINIMUM WAGE**

10 70. Plaintiff realleges and incorporates by reference all allegations in all
11 preceding paragraphs.

12 71. As a result of failing to compensate Plaintiff any wages whatsoever for the
13 final pay period of his employment, Defendant willfully failed or refused to pay Plaintiff
14 the FLSA-mandated minimum wage.

15 72. Defendant's practice of willfully failing or refusing to pay Plaintiff at the
16 required minimum wage rate violated the FLSA, 29 U.S.C. § 206(a).

17 73. Plaintiff is therefore entitled to compensation for the full applicable
18 minimum wage at an hourly rate, to be proven at trial, plus an additional equal amount as
19 liquidated damages, together with interest, reasonable attorney's fees, and costs.

20 **WHEREFORE**, Plaintiff, Dennis Welsh, respectfully requests that this Court
21 grant the following relief in Plaintiff's favor, and against Defendants:

22 A. For the Court to declare and find that the Defendants committed one of
23 more of the following acts:
24

1 i. Violated minimum wage provisions of the FLSA, 29 U.S.C. §

2 206(a), by failing to pay proper minimum wages;

3 ii. Willfully violated minimum wage provisions of the FLSA, 29

4 U.S.C. § 206(a) by willfully failing to pay proper minimum wages;

5
6 B. For the Court to award Plaintiff's unpaid minimum wage damages, to be
7 determined at trial;

8 C. For the Court to award compensatory damages, including liquidated
9 damages pursuant to 29 U.S.C. § 216(b), to be determined at trial;

10 D. For the Court to award prejudgment and post-judgment interest;

11 E. For the Court to award Plaintiff reasonable attorneys' fees and costs of the
12 action pursuant to 29 U.S.C. § 216(b) and all other causes of action set
13 forth herein;

14 F. Such other relief as this Court shall deem just and proper.

15
16
17 **COUNT TWO: ARIZONA MINIMUM WAGE ACT**
18 **FAILURE TO PAY MINIMUM WAGE**

19 74. Plaintiff realleges and incorporates by reference all allegations in all
20 preceding paragraphs.

21 75. As a result of failing to compensate Plaintiff any wages whatsoever for the
22 final pay period of his employment, Defendant willfully failed or refused to pay Plaintiff
23 the Arizona minimum wage.

24
25 76. Defendant's practice of willfully failing or refusing to pay Plaintiff at the
26 required minimum wage rate violated the AMWA, A.R.S. § 23-363.

27

1 77. Plaintiff is therefore entitled to compensation for the full applicable
2 minimum wage at an hourly rate, to be proven at trial, plus an additional amount equal to
3 twice the underpaid wages as liquidated damages, together with interest, reasonable
4 attorney's fees, and costs.
5

6 **WHEREFORE**, Plaintiff, Dennis Welsh, respectfully requests that this Court
7 grant the following relief in Plaintiff's favor, and against Defendants:

8 A. For the Court to declare and find that the Defendant committed one of more
9 of the following acts:

10 i. Violated minimum wage provisions of the AMWA, A.R.S. § 23-
11 363, by failing to pay proper minimum wages;

12 ii. Willfully violated minimum wage provisions of the AMWA, A.R.S.
13 § 23-363 by willfully failing to pay proper minimum wages;
14

15 B. For the Court to award Plaintiff's unpaid minimum wage damages, to be
16 determined at trial;

17 C. For the Court to award compensatory damages, including liquidated
18 damages pursuant to A.R.S. § 23-364, to be determined at trial;

19 D. For the Court to award prejudgment and post-judgment interest;

20 E. For the Court to award Plaintiff reasonable attorneys' fees and costs of the
21 action pursuant to A.R.S. § 23-364 and all other causes of action set forth
22 herein;
23

24 F. Such other relief as this Court shall deem just and proper.
25
26
27

COUNT THREE: ARIZONA WAGE ACT
FAILURE TO PAY WAGES DUE AND OWING

78. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

79. As a result of the allegations contained herein, Defendants did not compensate Plaintiff wages due and owing to him.

80. Defendants engaged in such conduct in direct violation of A.R.S. § 23-350.

81. As such, unpaid wages for such time Plaintiff worked are owed to Plaintiff for the entire time he was employed by Defendants.

82. Defendants knew that – or acted with reckless disregard as to whether – their refusal or failure to properly compensate Plaintiff over the course of his employment would violate federal and state law, and Defendants were aware of the Arizona Wage Act’s requirements during Plaintiff’s employment. As such, Defendants’ conduct constitutes a willful violation of the Arizona Wage Act.

83. Plaintiff is therefore entitled to compensation for his unpaid wages at an hourly rate, to be proven at trial, in an amount that is treble the amount of his unpaid wages, plus interest thereon, and his costs incurred.

WHEREFORE, Plaintiff, Dennis Welsh, requests that this Court grant the following relief in Plaintiff’s favor, and against Defendants:

A. For the Court to declare and find that the Defendants violated the unpaid wage provisions of A.R.S. § 23-350, et seq., by failing to pay wages due and owing to Plaintiff;

- 1 B. For the Court to award an amount that is treble Plaintiff's unpaid wages
2 pursuant to A.R.S. § 23-355, in amounts to be determined at trial;
3 C. For the Court to award prejudgment and post-judgment interest on any
4 damages awarded;
5
6 D. For the Court to award Plaintiff's reasonable attorneys' fees and costs of
7 the action and all other causes of action set forth in this Complaint; and
8 E. Such other relief as this Court deems just and proper.

9
10 **JURY TRIAL DEMAND**

11 Plaintiff hereby demands a trial by jury on all issues so triable.

12 RESPECTFULLY SUBMITTED this 15th day of March 2022.
13

14 BENDAU & BENDAU PLLC

15 By: /s/ Clifford P. Bendau, II

16 Christopher J. Bendau

17 Clifford P. Bendau, II

Attorneys for Plaintiff
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VERIFICATION

Plaintiff, Dennis Welsh, declares under penalty of perjury that he has read the foregoing Verified Complaint and is familiar with the contents thereof. The matters asserted therein are true and based on his personal knowledge, except as to those matters stated upon information and believe, and, as to those matters, he believes them to be true.

Dennis John Welsh

Dennis Welsh

Signature: *Dennis John Welsh*
Dennis John Welsh (Mar 15, 2022 07:13 PDT)

Email: dennis.john.welsh@gmail.com